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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,185	04/19/2004	Mike Musgrave	COS-889	2436

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EXAMINER

LEE, RIP A

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 04/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/827,185

Applicant(s)

MUSGRAVE ET AL.

Examiner

Rip A. Lee

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6,8,9,11-24 and 26-30 is/are rejected.
- 7) ☒ Claim(s) 1, 4, 5, 7, 8, 10, 12, 15, 19, 21, 25 and 27 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 04-19-2004.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Claim Objections

1. Claims 1, 4, 5, 12, 15, 21, and 27 are objected to because of the following informalities: The term “by weight” is not needed after “ppm.” Appropriate correction is required.
2. Claim 8 is objected to because of the following informalities: Please replace “substitutant” with “substituent.” Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim recites providing a concentration of 1700-2300 ppm of clarifying agent, however, claim 12, from which claim 15 depends, recites that the overall amount of clarifying agent is 300-4000 ppm. If the blend contains 4000 ppm of clarifying agent, it is not clear how one would adjust the level of clarifying agent so that the blend contains 1700-2300 ppm.

There is insufficient antecedent basis for the term “said mixing” in the claim. Please check claim dependency.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1-4, 6, 8, 9, 11-24, and 26-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meka *et al.* (U.S. 2005/0009991) in view of McCullough (U.S. 6,105,854).

Meka *et al.* discloses a composition comprising 50-85 wt % of impact copolymer and 15-50 wt % of plastomer, the latter of which is a random copolymer (claim 1). A suitable impact copolymer is a nucleator-free PP 7032E2 having an EP rubber content of 17 wt %, an ethylene content of 53 wt %, and exhibiting MFR of 4 g/10 min (paragraph [0084], Table 2). Plastomers have ethylene derived units and at least one C₃-C₈ alpha olefin derived unit and are made using metallocene catalysts (paragraphs [0047] and [0051]). The inventors contemplate use of dibenzylidene sorbitol based nucleating agents (paragraph [0040]), however, there is no disclosure on the amount which is to be used. McCullough teaches impact copolymers are hazy due to the fact that they contain a rubbery dispersed phase (col. 1, lines 9-25). The inventor has found that dibenzylidene sorbitol nucleating agent, used in amounts of about 800 ppm to about 5000 ppm, are especially well suited for impact copolymer compositions in that they impart clarity to said compositions (col. 2, line 54 – col. 3, line 4). From these teachings, one having ordinary skill in the art would have found it obvious to use dibenzylidene sorbitol nucleating

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agent at levels of about 800 ppm to about 5000 ppm in the compositions of Meka *et al.* because McCullough teaches this beneficial working amount. The combination of teachings is obvious because Meka *et al.* prescribes use of dibenzylidene sorbitol nucleating agents for impact copolymers, and McCullough fills in an otherwise obvious missing quantity. One of ordinary skill in the art would have found it obvious to arrive at the subject matter of the instant claims because such an embodiment flows naturally from the teachings of the two patents.

Articles of manufacture comprising the inventive compositions are disclosed in Meka *et al.*, and one of ordinary skill in the art would have found it obvious to arrive at the process and article claims of the instant application because instructions are clearly provided in the patent. Extrusion and molding methods are discussed in paragraphs [0062] to [0065]. The compositions are well suited for articles that are exposed to low temperatures (paragraph [0060]). Examples of articles include covers, pans, bottles, luggage, and boxes (paragraph [0067]).

Regarding claims 2, 3, and 28-30, there is no indication of the claimed properties in the cited references, however, in view of the fact that the materials of the prior art are essentially the same as that recited in the claims, a reasonable basis exists to believe that they exhibit essentially the same physical properties. Since the PTO can not perform experiments, the burden is shifted to the Applicants to establish an unobviousness difference. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

8. Claims 5, 7, 10, 19, and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten to overcome claim objections (claim 5) and if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 5 requires the blend to contain about 30 wt % of impact copolymer, about 300-4000 ppm of clarifying agent, and the balance of random copolymer. Meka *et al.* discloses a composition comprising 50-85 wt % of impact copolymer only. Claims 7, 10, 19, and 25 describe the random copolymer as an ethylene propylene copolymer having about 0.15-4.0 wt % of ethylene. The prior art does not disclose such a random copolymer.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rip A. Lee whose telephone number is (571)272-1104. The examiner can be reached on Monday through Friday from 9:00 AM - 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu, can be reached at (571)272-1114. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <<http://pair-direct.uspto.gov>>. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

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April 11, 2006



DAVID W. WU

ASSISTANT PATENT EXAMINER
TECHNOLOGY CENTER 1700